

**APPROVED**



**SCOTTSDALE BOARD OF ADJUSTMENT  
3939 N. Drinkwater Boulevard  
Kiva at City Hall  
Scottsdale, AZ  
February 2, 2005  
6:00 PM  
MINUTES**

**PRESENT:** James Vail, Chair  
Terry Kuhstoss, Vice Chair  
Jennifer Goralski, Board Member  
Carol Perica, Board Member  
Neal Waldman, Board Member

**ABSENT:** Ernest Jones, Board Member  
Howard Myers, Board Member

**STAFF:** Donna Bronski  
Cheri Scott  
Tim Curtis  
Al Ward  
Keith Neiderer  
Dan Symer  
Joe Morris

**CALL TO ORDER**

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**APPROVAL OF MINUTES**

1. December 8, 2004

**APPROVED 3/2/2005 BOA**

**Commissioner Perica moved to approve the minutes as presented. Vice Chair Kuhstoss seconded the motion. The minutes were approved as presented by a vote of five (5) to zero (0).**

## **REGULAR AGENDA**

**CHAIR VAIL** explained the function of the Board of Adjustment and the constraints placed upon the Board by State law. He also explained the format for applicant testimony and public comment. Chair Vail reminded the Applicants that they must receive four positive votes in order to obtain their variance request. He noted that, even though two Board Members were absent this evening, the four vote requirement was still in effect.

2. 13-BA-2004 Milde Home Addition Request approval for a variance from Article V, Section 5.204E.1 regarding front yard setback requirements along Dusty Miller Court frontage on property with Single Family Residential, Environmentally Sensitive Lands, (R1-43 ESL) zoning and located at 39204 N Boulder View Drive.

**MR. NEIDERER** advised the Board that the Applicant had requested a continuance to the March 2, 2005 meeting.

**Vice Chair Kuhstoss moved to deny the request for a continuance for case number 13-BA-2004 to the March 2, 2005 meeting. She stated that she did not wish to set a precedent, as a continuance had been granted at the December, 2004 meeting. The motion failed for lack of a second.**

**Commissioner Perica moved to continue case number 13-BA-2004 to the March 2, 2005 meeting. She referred to the unusual absence of two Board Members. Commissioner Waldman seconded the motion.**

**The motion passed by a vote of four (4) to one (1), with Vice Chair Kuhstoss voting "nay".**

3. 14-BA-2004 Marshall Deluca Residence Request approval for a variance from Article V, Section 5.204E.1 regarding front yard setback requirements on property with Single Family Residential, (R1-35) zoning and located at 8020 E Sharon Drive.

**MR. AL WARD** recalled that the case had been continued from the December 8, 2004 meeting. He reviewed the case per the staff packet, and pointed out the inclusion of additional information as requested by the Board at the December meeting. He noted that staff had received seven new E-

mails or letters in support regarding this variance, with no correspondence in opposition.

**MR. WARD** discussed the issue of front yard setbacks for other homes in the area, the widening of the drainage easement channel, and clarification of the city's preference related to access location preference. He noted that for the period between 1979 – 1988, there had been 15 Board of Adjustment cases in the subject area, in which similar setback variances had been granted. Mr. Ward stated that, with regard to the 30-foot drainage easement, it was unclear as to how the increase to 46 feet had occurred. He added that utilization of that side of the applicant's property would require a report by a civil engineer and extensive infill. Mr. Ward noted that both access locations to the site, Sharon Drive and 81<sup>st</sup> St. were considered to be safe, however, if only one driveway was to be considered, the city's preference would be Sharon Drive. Mr. Ward responded to questions from the Commissioners.

**COMMISSIONER PERICA** asked if the setback requirements were the same at the time the variances were granted for the homes between 1979 and 1985. Mr. Ward replied that they were the same.

**MR. MORRIS**, community development engineer in Planning and Development Services, explained, in response to questions by Commissioner Perica and Chair Vail, that the process to utilize any portion of the wash side of the property could possibly be a long and expensive ordeal. He reviewed the rationale for the design requirements for the channel. Mr. Morris referred to engineering challenges inherent in reducing the width of the channel, and that the project would be substantial.

**COMMISSIONER WALDMAN** asked if the city has a legal easement agreement with the applicant. Mr. Morris replied that the documents indicate a 15-foot easement for the properties on each side of the wash.

**VICE CHAIR KUHSTOSS** inquired as to the decreased size of the channel to the north and south of the property. Mr. Morris noted that the properties to the north of Thunderbird were low-density development, and didn't require the larger easement for safety. He stated that he did not have sufficient information to explain the decreased size of the wash south of Sharon.

**JOHN DELUCA**, applicant, 8020 E. Sharon Drive, addressed the Commission, and restated his position with regard to the usable space and landmass (38 percent) available to him after complying with the required setbacks. He referred again to the increased width of the wash and the spate of problems associated with utilizing that portion of the property.

**MR. DELUCA** responded to questions from the Commissioners, and further clarified elements of his presentation.

(Chair Vail opened public comment.)

**MR. BILL PARKER**, 8013 E. Sharon Drive, spoke in support of the variance request. He stated that he has lived in his residence for nine years, and that the wash bordering the DeLuca residence has not undergone any erosion. He observed that the three-front-yard determination for the DeLuca residence was unreasonable

(Chair Vail closed public comment.)

**CHAIR VAIL** asked Mr. Ward to return for several questions. Chair Vail referred to Case Number 10BA79, and asked for clarification on the approved variance. Mr. Ward replied that the variance approved the wall location from the 40-foot requirement to 15 feet. He added that this property was recognized as the entryway to the sub-division and thus allowed the requested wall placement.

**COMMISSIONER WALDMAN** observed that the lot was quite interesting, with some extraordinary circumstance. He stated that he would support the application.

**COMMISSIONER GORALSKI** expressed her appreciation for all of the supporting documentation from staff and stated that she too would support the variance request.

**CHAIR VAIL** commented that the addition would be an enhancement and would also contribute to the safety of the neighborhood by eliminating the driveways on Eighty-First Street.

**VICE CHAIR KUHSTOSS** agreed that getting the driveway off of Eighty-First Street was appropriate, but that, under the law, the best way to resolve the issue was to address the wash situation.

**COMMISSIONER PERICA** stated that in view of the additional information received from Mr. Ward and Mr. Morris, she felt that the four criteria had been met. She stated that she would support the variance.

**Commissioner Goralski moved to approve case number 14-BA-2005, the DeLuca residence. Commissioner Perica seconded the motion. The motion passed by a vote of four (4) to one (1) with Vice Chair Kuhstoss voting “nay”.**

4. 17-BA-2004 – Young Residence. Request for approval for a variance from Article V, Section 5.404E.2 regarding side yard setback requirements on property with Single Family Residential, Planned

Residential Development Overlay (R1-10 PRD) zoning and located at 2401 N. 57<sup>th</sup> Street.

**MR. SYMER** stated that the applicant has requested a continuance.

**Vice Chair Kuhstoss** moved to continue case number 17-BA-2004. **Commissioner Waldman** seconded the motion. **Vice Chair Kuhstoss** added that the case would not be considered until receipt of the drainage information. **Chair Vail** asked to amend the motion to specify that the case would be continued to the March 2, 2005 meeting. **Vice Chair Kuhstoss** agreed, but again stated that receipt of the drainage information must be received prior to consideration. **Chair Vail** called for the vote. The motion passed unanimously by a vote of five (5) to zero (0).

5. Election of Officers

**Chair Vail** moved to approve **Vice Chair Kuhstoss** as the new **Chair**. **Commissioner Goralski** seconded the motion. The motion passed unanimously.

**Chair Elect Kuhstoss** moved to approve the nomination of **Commissioner Perica** as **Vice Chair**. **Commissioner Waldman** seconded the motion, which passed unanimously.

**Chair Vail** thanked the Board Members for making his tenure as **Chair** a pleasant and rewarding experience.

**ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 7:05 PM.

Respectfully submitted,

"For the Record" Court Reporters